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## The EU Referendum: Who should vote?

posted by Jo Shaw

on May 25, 2015



**By Jo Shaw, University of Edinburgh @joshaw**

The question of who votes in what elections is usually thought to be a rather nerdy and obscure question, and it doesn't often capture the public imagination. So it was quite something to see an announcement from Number 10 in advance of the publication of the EU Referendum Bill telling us what the franchise is going to be in the referendum trending as 'most popular' and as a 'top story' on the BBC News website early in the morning of the late May Bank Holiday 2015. The announcement seems to have been made to forestall further debate on the franchise, which had been gaining quite a lot of traction on the airwaves, in the newspapers and in social media.



According to the announcement, the Referendum Bill will use a modified Westminster franchise. So it will use the franchise for UK national elections – i.e. resident UK, Irish and Commonwealth citizens, plus those who have not been resident outside the UK for more than 15 years, but it will import two additions from the franchise for European Parliament elections: members of the House of Lords will be able to vote, and those who are resident in Gibraltar. It would not include three groups of possible voters:

- UK citizens resident abroad (or perhaps in the EU only), no matter how long they have been resident in the UK;
- EU citizens who are able to vote in the UK in European Parliament and local elections (and in the devolved assemblies and Parliaments) on the basis of residence; and
- 16-17 year olds (presumably in the above categories as well as those who are resident UK citizens)

The issue has become politicised in the UK, in part because the first group felt they had been the recipients of a firm pledge from the Conservative party that the current 15 year bar on expatriate voting would be lifted (repeated on p.49 of the 2015 Conservative Party manifesto), and the latter two groups both voted in the September 2015 referendum on Scottish independence, with the third group also set to vote in future elections (including the one to be held in 2016), pursuant to an anticipated Westminster devolution of power to the Scottish Parliament to set its own franchise.

All debates and decisions about the franchise are a mixture of principle and pragmatism – especially where the starting point is a rather mixed bag of voting rights. So unlike the vast majority of states, the UK does not limit its voting rights in national elections to citizens alone. On the contrary, ever since the boundaries of the UK as we know it were carved out as a result of the end of empire and the dissolution of the union with Ireland, those who had been ‘subjects’ of the Crown found themselves continuing to

franchise in the modern state, even if this sits uncomfortably with a notion of a national citizenship with sharp boundaries between those inside and outside the circle of inclusion.

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That said, the inclusion of at least some external voters in the UK franchise sits more comfortably with itself with a more general international trend towards allowing non-resident citizens to vote in elections going as far as most states now do. So in 2014 the European Commission suggested that the UK, along with other EU Member States, should reconsider its current policies and enact a more generous enfranchisement of external voters, especially those resident elsewhere in the EU. This was to avoid the situation where voters might find themselves unable to vote in any national elections (e.g. if they have been abroad for fifteen years, but yet did not qualify for citizenship in their host state, or for various reasons did not acquire that citizenship, e.g. if that meant giving up UK citizenship).

The UK also has an unusual approach to the enfranchisement of non-UK EU citizens on the basis of which is only required under EU law for local and European Parliament elections, but which is extended by matter of UK law – also to elections to the devolved assemblies. Not only did EU citizens vote in the 2014 independence referendum, but they have also voted in all of the referendums that preceded the current devolution arrangements, with the exception of the referendum in Northern Ireland which was conducted on a basis of the Westminster franchise. No other EU Member State has enfranchised non-national EU citizens in this manner; other states continue to insist that longterm resident EU citizens who want to vote in most national elections must themselves become citizens by naturalisation, with all the difficulties that this entails (including in some cases the loss of their original citizenship). A wider enfranchisement of EU citizens on the basis of residence has long been debated, but a European Citizens' Initiative did not achieve much political traction across the EU.

And while the initial proposal to enfranchise 16-17 year olds to vote in the Scottish independence referendum was viewed with a degree of scepticism in some quarters, perceptions have changed substantially on this issue in Scotland. The enfranchisement is generally thought not to have changed the result in any substantial way. Younger age groups seem to have had higher turnout figures than their immediate seniors, the 18-24 year old age group probably a slightly greater propensity to vote no). But the principle of enfranchising young adults in the referendum of ensuring that they receive opportunities, within the framework of educational processes in place, to understand the significance of the choices they are being asked to make has been part of the politicalisation process in Scotland which receives wide approval, whatever position people take on the issue of an independent Scotland.

The predictable result of all of this is confusion, as there is no coherent 'membership model' to which all adheres in the matter of elections or referendums. The Scottish referendum franchise, which includes a range of persons resident in Scotland but excluded persons born in Scotland but now resident elsewhere in the UK or outside the UK is a case in point. The latter group would have become Scottish citizens in the event of a yes vote (as well as remaining, we can assume, UK citizens). The choice was widely defended as a

compromise on which to conduct the vote. Despite rumblings from ‘expat Scots’, threatened challenge the franchise did not ensue – and for good reason. For that referendum, the setting of the franchise is a matter for the legislation enacted to allow the referendum. There are no formal constitutional provisions on referendums in the UK. And there are, in international human rights law that would preclude the legislature having a free choice across the existing electoral rolls, including those for local, devolved, Westminster and European Parliament elections. This means that the franchise can be the subject of political horse-trading.

Those proposing any particular franchise for any given electoral or referendum event will be aware of the roll chosen might be very likely to affect the outcome. In excluding EU citizens, Prime Minister David Cameron is said to be bowing to eurosceptics in his own party. Equally, those who are campaigning for the inclusion of EU citizens may be doing so not just because of the principle that they have been resident and paying taxes in the UK for some time, and that they will be profoundly affected as regards issues of personal status by the effects of the referendum, but also because they may have an inkling that this group would vote in favour of the UK staying in the EU. That said, it is worth pointing out that registration and participation levels amongst non-UK citizens resident in the UK in the elections they can vote in is lower than amongst UK citizens, even though there are clearly some groups to whom these rights to vote – and the possibility of participating in the EU referendum – matter intensely, for obvious reasons. Even if they participated at the same rate as UK citizens, they are likely to account for less than 5% of the overall voting roll. External voters also continue to prove a hard to reach group, with much lower levels of participation during the years when they are enfranchised. It seems likely that they too, if resident in the EU at least, might be inclined to vote in favour of EU membership, in order to protect their own status, although no one can be sure about that point. In a has been pointed out, they retain the option of acquiring UK citizenship (between now and the referendum, indeed) if they want to vote. Resident 16-17 year olds are, by contrast, not so hard to reach. For some people continue to harbour doubts about whether it is appropriate that they should vote, even though there is a modest international trend to lower the age of franchise, as well as the positive experience of the Scotland experiment on which to draw. Moreover, the Scotland experience seemed to indicate that the voting choice might not differ so greatly from that of the ‘mainstream’ voting population.

There are no right or wrong answers on the question of the scope of the franchise. The uncertainties about the question are, however, accentuated by the uncertainties about exactly what we might be voting on, at the time when the Scottish referendum franchise was set, the terms of the vote were pretty plain. Obviously there were certain clarifications (e.g. on currency matters most particularly) during the campaign. The EU vote is quite different, because of the uncertainties (and secrecy) of the diplomatic negotiations the UK government is now purporting to lead, in order to seek those adjustments to the terms of EU membership that the government claims it has an electoral mandate to negotiate, given the terms of the 2015 Election victory in May 2015. The possible ‘adjustments’ are profoundly unclear, especially as regards the form that they might take, and of course there are quite a few people in the UK who are sceptical about whether these negotiations matter at all. Plenty will vote “in”, regardless of the Cameron ‘deal’. Plenty will vote

'deal', for many observers, is simply a process of political choreography to allow David Cameron Osborne to avoid the Conservative Party falling apart over its divisions on the subject of the EU. It ce about something which many EU citizens, right across the EU might want to vote on, namely a thorough transnational reconsideration of whether the legal and institutional framework for integration across Europe is now fit for purpose as we approach the middle decades of the twenty first century. At that extent, non-UK EU citizens resident in the UK might end up feeling doubly excluded if they do not vote: namely not only can they not participate in whatever referendum there is, but also they may wonder if the referendum that is taking place does not itself really get to the nub of the issues as far as they are concerned.

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